

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 2:03CR088

MORRIS JAMES

ORDER

This cause comes before the Court on the defendant's motion for release from custody pending appeal [118-1] and motion to stay date of incarceration pending appeal [121-1].

18 U.S.C. § 3143(1) states in relevant part:

Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in--

- (i) reversal,
- (ii) an order for a new trial,
- (iii) a sentence that does not include a term of imprisonment, or
- (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

18 U.S.C.A. § 3143(1).

The Court finds by clear and convincing evidence that the defendant does not pose a flight risk. The question of whether his appeal raises a substantial question of law or fact likely to affect his sentence is a more difficult question, and, as the Government has noted, the defendant has not articulated such a question in his motion for release pending appeal. However, the Court is cognizant of the fact that the defendant has a new attorney who apparently has had some difficulty in securing a copy of the trial transcript. More importantly, the Court recognizes that the defense offered at trial turned largely on legal and factual questions surrounding the so-called “Black Farmers’ Lawsuit” and the issue of slavery reparations. While the Court is confident of the correctness of its rulings with regard to these issues, they do arguably raise a substantial question of law and/or fact which would certainly result in a change in the defendant’s sentence should the appellate court decide them differently.

ACCORDINGLY, it is hereby ORDERED that the defendant’s motion for release from custody pending appeal [118-1] is GRANTED. The defendant’s motion to stay date of incarceration pending appeal [121-1] is DENIED as MOOT.

This is the 29th day of April, 2005.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE